

REMARKS

Claims 1-60 are pending. Claims 4, 17-19, 21, and 42 have been amended to overcome 112 rejections. No new claims have been added, canceled or withdrawn.

Applicants have carefully studied the outstanding Office Action. The present Response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of this application is respectfully requested. Applicants respectfully request reconsideration and withdrawal of the Examiner's rejections in view of the foregoing amendments and following remarks.

Claim Rejections - 35 USC §112

Claims 4, 17-19, 21, and 42 are rejected under 35 U.S.C.112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With respect to claims 4, 17-19, 21 and 42 the Office Action in part states:

- 4. The following limitations lack antecedent basis:
 - (a) Claim 4- "said viewer" (line 1)
 - (b) Claim 17 - "said viewer" (line 2 and 3)
 - (c) Claim 18 - "said viewers" (line 2)
 - (d) Claim 21 - "step e" (line 2)
 - (e) Claim 42 - "said talent seeker" (line 1)

RESPONSE:

The Examiner is thanked for pointing out the inadvertent antecedent basis errors. Applicants have amended claims 4, 17-19, 21, and 42. It is believed the rejection is moot in view of amendment. Consequently, Applicants respectfully request the Examiner withdraw the rejection.

Claim Rejections - 35 USC § 102

Claims 1-3, 5-6, 8-9, 13, 16, 20-23, 26-27, 30-31, 34, 38-40, 43-47, 49, 51-54, 57, and 59-60, are rejected under 35 U.S.C. 102(e) as being anticipated by Hohenacker (US Pub. No. 2005/0100311). With respect to claims 1-3, 5-6, 8-9, 13, 16, 20-23, 26-27, 30-31, 34, 38-40, 43-47, 49, 51-54, 57, and 59-60, the Office Action in part states:

7. As to claim 1, Hohenacker discloses an interactive personal service provider for video communication having a studio (Abstract) comprising: an audio and video recorder to record at least one performance thereby making a recorded performance (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]);

at least one computer server for storing said recorded performance (Fig. 1, label 31 and [0063]) further comprising:

an audio and video player to preview said recorded performance ([0091]); and a database to receive input information from a studio user that relates to said recorded performance ([0083]); and

a communication connection to transmit said recorded performance to a studio site maintained by a studio operator ([0040], [0041], recording centre reads on a studio site) wherein said recorded performance is categorized and wherein said site enable a plurality of viewers to view said recorded performance ([0043]-[0045]).

8. As to claim 20, Hohenacker discloses a method for placing a performance of a studio user on a studio site, said method comprising the steps of:

- a. providing a studio in a public locations ([0005]) wherein said studio comprises an audio and video recording capability (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]);
- b. recording a performance of a studio user in said studio onto a studio server thereby creating a recorded performance ([0063]);
- c. categorizing said recorded performance by subject matter in a database ([0079]), different types of video recordings can be made and [0093] discloses how different types of recorded materials are handled differently, i.e. they are inherently categorized); and

- d. making said recorded performance accessible from a studio site maintained by a studio operator ([0040]-[0041], recording centre reads on a studio site).
- 9. As to claim 38, Hohenacker discloses a method of recruiting talent comprising:
 - a. providing a studio in a public place for at least one studio user to record a performance ([0005]);
 - b. recording said performance in said studio on a studio server thereby making a recorded performance ([0063]);
 - c. transmitting said recorded performance to an information seeker ([0040]- [0041]).
- 10. As to claim 51, Hohenacker discloses an apparatus for distributing information to at least one information seeker said apparatus comprising:
 - at least two studio booths ([0001]) wherein each studio booth is equipped with an audio and video recording device (Fig. 1, label 30 (audio recorder) and label 39 (video recorder) and [0073]-[0074]) and is located in a publicly accessible location ([0005]); and
 - a studio site connected to each said studio booth wherein a plurality of studio users can access one of the plurality of said studio booths to upload a performance ([0040]-[0041], recording centre reads on a studio site).
- 11. As to claims 2,21, and 57, Hohenacker discloses said studio operator can query said database for criteria specified by an information seeker ([0029]-[0030]).
- 12. As to claim 3, Hohenacker discloses a viewer is restricted from viewing said input information of said studio user on said site ([0093]).
- 13. As to claims 5, 23, and 44, Hohenacker discloses a professional media kit is produced from said input information and said recorded performance ([0046]).
- 14. As to claim 6, Hohenacker discloses an information seeker can query said input information ([0029]-[0030]).
- 15. As to claims 8,26,45, Hohenacker discloses said recorded performance is reviewed by a personal coach ([0026]).

16. As to claims 9,27, and 46, Hohenacker discloses said recorded performance comprises a Karaoke-style performance performed in said studio ([0079]).

17. As to claims 13, 31, and 53-54, Hohenacker discloses said studio site comprises a website ([0050]).

18. As to claims 16 and 60, Hohenacker discloses a video conferencing capability ([0079]).

19. As to claim 22, Hohenacker discloses information is input by said studio user prior to making said recorded performance accessible at step d ([0030]).

20. As to claim 30, Hohenacker discloses said studio user agrees to an exclusive agency contract with a studio operator prior to step b ([0081]).

21. As to claims 34 and 59, Hohenacker discloses said recorded performance comprises at least two studio users in at least two separate locations ([0001]).

22. As to claim 39, Hohenacker discloses said studio user further provides demographic information ([0030]).

23. As to claim 40, Hohenacker discloses a talent seeker may access said demographic information ([0030]).

24. As to claim 43, Hohenacker discloses said demographic information is transmitted to a talent seeker ([0030]).

25. As to claim 47, Hohenacker discloses said recording of step b) is achieved in an interview fashion whereby questions are transmitted through at least one speaker ([0008]).

26. As to claim 49, Hohenacker discloses said information seeker at step c) further views said recorded performance from an internet connection ([0040]).

27. As to claim 52, it is rejected by the same rationale set forth in claim 1's rejection.

RESPONSE:

The Hohenacker reference was filed in the PCT on February 20, 2002. The corresponding PCT publication WO 02/080519 published on February 13, 2003 in German. According to the public pair system the reference was filed in the U.S. on August 21, 2003. Consequently, because the international application was not published

in English under PCT Article 21(3), the reference is effective as of its U.S. filing date of August 21, 2003. MPEP 2136.03II.

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. 37 CFR § 1.131(a). The showing of facts shall be such, in character and weight, as to establish conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to the filing of the application. 37 CFR § 1.131(b).

Conception has been defined as the complete performance of the mental part of the inventive act and it is the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice. MPEP 2138.04. Richard Dale Dean, a named inventor of the instant application, has submitted a declaration with evidence establishing that the claimed invention was conceived of no later than July 25, 2003.

The diligence of attorney in preparing and filing patent application inures to the benefit of the inventor. MPEP 2138.06. Reasonable diligence is established if attorney worked reasonably hard on the application during the continuous critical period. *Id.* Chad Walter, the attorney who filed the application and author of this document, has submitted a declaration establishing due diligence from prior to the effective date to the filing of the application.

In view of the above, Applicants submit that the Hohenacker reference has been removed as an available reference under 35 U.S.C. § 102(e)

Claim Rejections - 35 USC § 103

Claims 10-11, 28-29, and 41-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohenacker, as applied to claims 1, 20, and 38, in view of what is well known in the art. With respect to claims 10-11, 28-29, and 41-42, the Office Action in part states:

30. As to claims 10 and 28, Hohenacker does not disclose said studio is substantially soundproof. However, it is well known practice to one of ordinary skill in the art to make recording studio substantially soundproof. Therefore, Official Notice (see MPEP 2144.03) is taken that practice was well known in the art and is implemented to gain the advantage of higher quality audio recordings (i.e. less background noise) by using substantially soundproof recording studios.

31. As to claims 11 and 29, Hohenacker does not disclose said audio and video recorder enables said studio user to transmit only one recording from at least two performances recorded by said studio user in said studio. However, allowing a user to make multiple recordings and uploading only one of those recording to a remote site would have been an obvious modification to one of ordinary skill in the art given the teachings of Hohenacker. Specifically, it is a common practice in the art to review, and if necessary rerecord poor performances, and only utilize one of the recordings. Therefore, Official Notice (see MPEP 2144.03) is taken that practice was well known in the art and is implemented in order allow the user to make errors and correct those errors.

32. As to claims 41 and 42, Hohenacker does not disclose said studio user or said talent seeker pays a subscription to provide said demographic information. However, charging a subscription fee for desired data that has been acquired is a common practice in the art. Therefore, Official Notice (see MPEP 2144.03) it is taken that it would have been an obvious modification to one of ordinary skill in the art at the time of the invention to charge subscription fees to users wishing to access the data acquired by the remote studios.

RESPONSE:

Each rejection above requires use of the Hohenacker reference. Because the Hohenacker reference is unavailable as prior art under 35 U.S.C. 102(e), it is also

unavailable as prior art under 35 U.S.C. 103. MPEP 2141.02 I. Consequently, in view of the argument above in regard to the Hohenacker reference being unavailable as prior art under U.S.C. 102(e) applicants respectfully request the Examiner withdraw the rejections as to claims 10-11, 28-29, and 41-42.

Claims 4, 7, 12, 14-15, 17-19, 24-25, 32-33, 35-37, 48, 50, 55-56, and 58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hohenacker as applied to claims 1, 20, 38 and 51, in view of Chacker (US Pat. 6,578,008). With respect to claims 4, 7, 12, 14-15, 17-19, 24-25, 32-33, 35-37, 48, 50, 55-56, and 58 the Office Action in part states:

34. As to claims 4, 24, and 58, Hohenacker does not disclose said viewer purchases said recorded performance from a studio operator. However, Chacker discloses a view purchasing an uploaded recorded performance from a studio operator (column 6, lines 63-65 and column 12, lines 48-53). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order for the studio to use the acquired recorded performances to earn a profit.

35. As to claims 7 and 25, Hohenacker does not disclose at least one information seeker bids to enter into contract negotiations with said studio user. However, Chacker discloses an information seeker bids to enter into contract negotiations with an uploading artist (column 7, lines 8-25). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order recruit talent (Chacker, column 4, lines 23-26).

36. As to claim 12, Hohenacker does not disclose said studio user electronically contracts with said studio operator for an exclusive agency contract for said recorded performance. However, Chacker discloses an uploading artist electronically contracts with a studio operator for an exclusive agency contract for an uploaded performance (column 7, lines 8-25). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to recruit talent (Chacker, column 4, lines 23-26).

37. As to claims 14, 32, 48, and 55, Hohenacker does not disclose a menu on said studio site lists subject matter and pre-determined main categories and subcategories. However, Chacker discloses a menu on a studio site lists subject

matter and pre-determined main categories and sub-categories (column 10, lines 30-35). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to create a user friendly interface by making the recorded performances more accessible.

38. As to claims 15 and 33, Hohenacker does not disclose a menu on said studio site allows user created categories and sub-categories. However, Chacker discloses a menu on a studio site allows user created categories and sub-categories (column 10, lines 30-35). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to create a user friendly interface by making the recorded performances more accessible.

39. As to claims 17, 35, 50, and 56, Hohenacker does not disclose said site further comprises a ratings means for enabling said viewer to rate said recorded performance wherein further said ratings means prohibits said viewer from rating said recorded performance more than once. However, Chacker discloses a ratings means for enabling a viewer to rate a recorded performance and preventing said viewer from compromising the ratings (column 7, lines 19-25, viewers trade stocks, effectively rating artists; viewers are giving a finite amount of resources to trade with). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Hohenacker and Chacker in order to allow direct user input which can then translate into popularity and marketing potential of prospective artists.

40. As to claims 18 and 36, Hohenacker and Chacker disclose the invention substantially with regard to the parent claim 17, and further disclose an information seeker is electronically notified when ratings from said viewers exceeds a pre-determined ratings threshold (Chacker, column 13, lines 23-28).

41. As to claims 19 and 37, Hohenacker and Chacker disclose the invention substantially with regard to the parent claim 18, and further disclose a studio operator is electronically notified when ratings from said viewers exceeds a predetermined ratings threshold (Chacker, column 13, lines 23-28).

RESPONSE:

Each rejection above requires use of the Hohenacker reference. Because the Hohenacker reference is unavailable as prior art under 35 U.S.C. 102(e), it is also unavailable as prior art under 35 U.S.C. 103. MPEP 2141.02 I. Consequently, in view of the argument above in regard to the Hohenacker reference being unavailable as prior art

under U.S.C. 102(e) applicants respectfully request the Examiner withdraw the rejections as to claims 4, 7, 12, 14-15, 17-19, 24-25, 32-33, 35-37, 48, 50, 55-56, and 58.

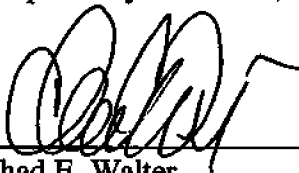
CONCLUSION

It is respectfully urged that the subject application is patentable over the references cited by Examiner and is now in condition for allowance. Applicants request consideration of the application and allowance of the claims. If there are any outstanding issues that the Examiner feels may be resolved by way of a telephone conference, the Examiner is cordially invited to contact Vincent Allen or Chad E. Walter at 972-367-2001.

The Commissioner is hereby authorized to charge any additional payments that may be due for additional claims to Deposit Account 50-0392.

Respectfully submitted,

By:



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